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**3. Trial (§ 156\*)—Demurrer to Evidence—Credibility of Witnesses—Withdrawal of Demurrant's Evidence.**—On plaintiff's demurrer to defendant's evidence, the court is bound to consider all the evidence in conflict with that of the defendant as withdrawn, the credibility of the defendant's witnesses admitted, and all the facts admitted which defendant's evidence, thus considered, tended to prove or which might be reasonably inferred from the whole evidence, direct and circumstantial.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 354-356; Dec. Dig. § 156.\* 4 Va.-W. Va. Enc. Dig. 522-527.]

**4. Trial (§ 105\*)—Reception of Evidence—Evidence Admitted without Objection.**—Where an inadmissible document, objectionable as hearsay, was admitted in evidence without objection, it should be considered as admissible.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 260-266; Dec. Dig. § 105.\* 1 Va.-W. Va. Enc. Dig. 560.]

**5. Assignments (§ 137\*)—Notice—Evidence—Question for Jury.**—In an action on a bond by an assignee, evidence held to require submission to the jury of the question whether the obligor had notice of the assignment prior to making certain disputed payments to the obligee.

[Ed. Note.—For other cases, see Assignments, Cent. Dig. § 234; Dec. Dig. § 137.\* 1 Va.-W. Va. Enc. Dig. 797.]

Error to Circuit Court, Tazewell County.

Action by Mrs. F. G. S. Watts, as assignee of John G. Watts, against Harman Newberry. Judgment for plaintiff, and defendant brings error. Reversed and rendered.

*S. M. B. Coulling*, of Tazewell, *S. W. Williams*, of Wytheville, *S. W. Williams, Jr.*, of Bland, and *R. B. Davis* of Petersburg, for plaintiff in error.

*Chapman & Gillespie*, of Tazewell, and *Jackson & Henson*, of Roanoke, for defendant in error.

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GILLESPIE et al. v. DAVIS et al.

Sept. 7, 1914.

[82 S. E. 705.]

**1. Reformation of Instruments (§ 43\*)—Deed—Mistake—Burden of Proof.**—In a suit to reform a deed for a mistake of the surveyor in surveying the land or of the scrivener in drafting the deed, the burden is on complainants to establish the mistake by clear and con-

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

vincing proof; a mere possibility, or even a probability, of mistake being insufficient.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. § 154; Dec. Dig. § 43.\* 11 Va.-W. Va. Enc. Dig. 905.]

**2. Reformation of Instruments (§ 45\*)—Deeds—Description—Mistake.**—Evidence held insufficient to justify a finding of mistake in the execution of a deed, either as to the survey of the plat or the correctness of the description.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. §§ 157-193; Dec. Dig. § 45.\* 11 Va.-W. Va. Enc. Dig. 905.]

**3. Evidence (§ 274\*)—Land Boundary—Declarations against Interest.**—Declarations of certain grantors that the line from a certain lynn and poplar to certain spruce pines was their north line, which, if true, would have restricted their holdings as claimed by complainants, were declarations against interest, and admissible, not only against the declarants, but against persons subsequently deriving title through or under them.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1121-1134; Dec. Dig. § 274.\* 4 Va.-W. Va. Enc. Dig. 333, 345.]

**4. Reformation of Instruments (§ 32\*)—Deeds—Mistaken Description—Survey.**—Where 54 years had expired since an alleged mistake in the description of a deed was made, and all the parties to the transaction, including the surveyor who surveyed the land, had been long dead, and the mistake, if it existed, was apparent on the face of the deed, and the land in the meantime had increased from a valuation of a dollar an acre to \$40 per acre, complainants' right to correct the alleged mistake was barred by laches.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. §§ 119-121; Dec. Dig. § 32.\* 11 Va.-W. Va. Enc. Dig. 905.]

Appeal from Circuit Court, Tazewell County.

Suit by J. S. Gillespie and others against W. R. Davis and others. Judgment for defendants and complainants appeal. Affirmed.

*Henson & Bowen, J. W. Chapman, and A. S. Higginbotham,*  
all of Tazewell, for plaintiffs in error,

*Geo. W. St. Clair,* of Tazewell, for defendants in error.

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DAMERON *v.* QUICK.

Sept. 7, 1914.

[82 S. E. 709.]

**1. Principal and Agent (§ 145\*)—Undisclosed Principal—Election**

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.